IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

CONSENT AMENDMENT TO ADMINISTRATIVE ORDER NO. 2010-WS-07-A1

EASTERN HILLS BAPTIST CHURCH Water Supply Facility No. 7820851

To: Pastor Seth Shipman
Eastern Hills Baptist Church
16996 State Orchard Road
Council Bluffs, Iowa 51503

Administrative Order No. 2010-WS-07 (order) was issued to the Eastern Hills Baptist Church on September 23, 2010 by the Iowa Department of Natural Resources (Department). The order imposed an administrative penalty of \$3,000.00 and fees of \$125.00. The Department received a notice of appeal letter dated October 1, 2010.

1. Section I. Summary is rescinded and replaced by the following.

This consent amendment to the order is agreed to by the Eastern Hills Baptist Church and the Department. This consent amendment requires the Eastern Hills Baptist Church to comply with the following requirements:

- Sample this public water supply (PWS) for coliform bacteria at least once per month, submit the sample to a certified laboratory, and perform required follow-up sampling when a positive result is obtained;
- Sample this PWS for nitrate at least once per year and submit the sample to a certified laboratory;
- Collect all additional sampling required by this PWS's operation permit; and
- Pay an administrative penalty of \$1,250.00 and fees of \$125.00.
- 2. Section II. Jurisdiction and Section III. Statement of Facts, paragraphs 1-2, of the order, remain the same as in the order. Paragraph 3 is added to the Statement of Facts by this consent amendment.
- 3. A notice of appeal letter from Pastor Seth Shipman was mailed on October 1, 2010 and received by the Department on October 4, 2010. The notice of appeal stated that there had been no monitoring violations since April 1, 2010 and that Pastor Shipman was making every effort to ensure that the testing is completed in compliance with the church's permit. The notice of appeal letter further stated that the church was committed to ensure the testing is completed according to regulations and in a timely manner. The notice of appeal letter requested a reduction in penalty due to the church being a non-profit organization with limited funds and a tight budget. Pastor Shipman offered to

settle the penalty for the amount of \$1,250.00. In view of the circumstances and the return to compliance, the Department accepts the settlement offer, conditioned upon the agreed upon settlement amount of \$1,250.00 plus fees of \$125.00 being paid to the Department within 30 days of receipt of the order signed by both parties. If the agreed upon penalty amount and fees are not paid within that time period, the penalty due will revert to the original amount of \$3,000.00.

- 3. Section IV. Conclusions of Law remains the same as in the original order.
- 4. Section V. Order is amended by rescinding paragraph 5 of Section V. and replacing it with new paragraph 5, which reads as follows:
- 5. You are required to pay an administrative penalty of \$1,250.00. You also owe \$125.00 for the annual water supply fee and late fee for fiscal year 2010. The administrative penalty and fees are required to be paid within 30 days of the Director's signature to this consent amendment. If the administrative penalty and fees are not paid within 30 days of the Director's signature to the consent amendment, the administrative penalty reverts to the original amount of \$3,000.00, which would be payable immediately to the Department.
 - 5. Section VI. Penalty is rescinded and replaced by the following:

VI. PENALTY

- 1. Iowa Code section 455B 191 authorizes the assessment of civil penalties of up to \$5,000 00 per day of violation for the violations involved in this matter.
- 2. Iowa Code section 455B 109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty assessed by this consent amendment is determined as follows:
- a <u>Economic Benefit</u>. There have been cost savings to the facility by not collecting all required coliform bacteria and nitrate samples. The total economic benefit assessed by this order is set at \$250.00
- b. <u>Gravity of the Violation</u>. One of the factors the Department considers in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, the Iowa Code authorizes substantial civil penalties. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This facility serves a daycare with a population of young children, which makes the need for monitoring even more important. Because of the

importance of the safe drinking water program and self monitoring to the safe drinking water program, the Department assesses \$500.00 for this factor.

- c. <u>Culpability</u>. This facility failed to take action in order to bring the facility into compliance despite the issuance of water supply operation permit and notice of violation letters. The facility has returned to compliance and has competed required monitoring and reporting since April 1, 2010. The notice of appeal letter maintains that the church is committed to ensure that tests are completed in accordance with regulations and with the proper time frames. This order assesses the amount of \$500.00 for this factor.
 - 6. Section VII. Appeal Rights is rescinded and replaced by the following:

VII. WAIVER OF APPEAL RIGHTS

This consent amendment to the order is entered into knowingly and with the consent of the Eastern Hills Baptist Church. For this reason, the Eastern Hills Baptist Church waives the right to appeal this consent amendment to the order. The Eastern Hills Baptist Church agrees to dismissal of the original appeal of the order. In all other respects, the order remains in full force and effect.

7. Section VIII. Noncompliance remains unchanged.

For questions contact:

Diana L. Hansen, Staff Attorney Legal Services Bureau Iowa Department of Natural Resources 502 East 9th Street Des Moines, Iowa 50319-0034

(515)-28)-6267

SETH SHIPMAN, PASTOR AND PRESIDENT

EASTERN HILLS BAPTIST CHURCH

2011

ROĞEK L LANDE

DIRECTOR

IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 2044 day of

Dated this $7^{1/2}$ day of

Eastern Hills Baptist Church- Water Supply Facility No. 7820851, Shelli Grapp, Water Supply Operations Section, Jerry Jordison- Field Office No. 4, Diana L. Hansen- Legal Services Bureau, US EPA Region VII, II.B.2.a(1), II.B.2.a(2), II.B.2.e, II.B.2.f., II.B.2.g.